



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

October 11, 2010

Ms. Jo Timmsen
Executive Director
Tell The Truth

REDACTED

Re: FPPC No. 10/809: Sonoma County Conservation Action PAC, and David Keller,
Treasurer

Dear Ms. Timmsen:

On September 23, 2010, the Fair Political Practices Commission's (the Commission) Enforcement Division received a 120-day civil demand from you regarding the above-referenced persons. We have not closed your complaint and will pursue this matter. We do not, however, intend to file a civil action.

In reviewing your complaint we have concluded that the District Attorney for the County of Sonoma, rather than the Commission, is the civil prosecutor with regard to the alleged violations in your complaint (section 91001(b)).

We are processing your complaint as a sworn complaint under Government Code section 83115. You will next receive notification from us upon final disposition of the case. However, please be advised that at this time we have not made any determination about the validity of the allegation(s) you have made or about the culpability, if any, of the person(s) you identify in your complaint.

Thank you for taking the time to bring this matter to our attention.

Sincerely,

A handwritten signature, likely of Roman G. Porter, is written in ink above the printed name.

Roman G. Porter
Executive Director

RGP/tr

cc. Sonoma County Conservation Action PAC, and David Keller

1 JO TIMMSEN
2 EXECUTIVE DIRECTOR
3 TELL THE TRUTH

4 REDACTED

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6 EMAIL: {

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12 FAIR POLITICAL PRACTICES COMMISSION
13 STATE OF CALIFORNIA

14 *Complaint Re:*

15 SONOMA COUNTY CONSERVATION
16 ACTION POLITICAL ACTION COMMITTEE,
17 a California general purpose committee,

18 and

19 DAVID KELLER, Treasurer of SCCA-PAC, an
20 individual,

Respondents.

Matter No.

VERIFIED/SWORN FORMAL
COMPLAINT AND DEMAND FOR
INVESTIGATION REGARDING
SONOMA COUNTY CONSERVATION
ACTION POLITICAL ACTION
COMMITTEE AND DAVID KELLER
PURSUANT TO CAL. GOV. CODE, §
83115

21 Complainants TELL THE TRUTH, a 501(c)(4) political watchdog organization in
22 Sonoma County and its executive director JO TIMMSEN ("Complainants") submit this Formal
23 Complaint and Demand for Investigation against SONOMA COUNTY CONSERVATION
24 ACTION POLITICAL ACTION COMMITTEE ("SCCA-PAC"), and SCCA-PAC's treasurer,
25 DAVID KELLER (collectively herein "Respondents") regarding the Respondents' failed
26 compliance with the California Political Reform Act (Cal. Gov. Code, §§ 81000 *et seq.*) ("Act").
27 On the evidence presented herein alone, SCCA-PAC and/or its treasurer are likely liable to the
28 FPPC and the State of California in an amount of \$80,000.

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I. GROUNDS FOR COMPLAINT

Tell The Truth is a nonprofit 501(c)(4) organization whose mission is to promote truthfulness, accuracy and accountability in political and public policy debate in Sonoma County.

The basis of this complaint is that Respondent Sonoma County Conservation Action Political Action Committee (FPPC ID No.911196) and its treasurer David Keller have failed to disclose thousands of dollars in monetary receipts in violation of the California Political Reform Act. **In addition, Respondents have failed to accurately report thousands of dollars in additional receipts and expenditures.**

The violations committed by Respondents literally deprived the citizens and voters of the State of California of the true source of monetary support of SCCA-PAC. The PAC's omissions violate specific provisions of the California Political Reform Act ("Act") but also the spirit of the Act, which is to lift the veil on campaign receipts and expenditures and identify those who fund political campaigns. Citizens and voters must be presented with the sources and flow of money in politics to maintain fairness in the process. SCCA-PAC and its treasurer deprived voters of that fairness.

Complainants' findings likely are just the tip of the iceberg as the violations recounted herein were discovered only because the committees contributing to SCCA-PAC publicly reported sums given to Respondent SCCA-PAC. SCCA-PAC failed to report at the very least those amounts. Complainants believe that more receipts by SCCA-PAC went unreported.

Moreover, SCCA-PAC remains an active organization and, thus, the violations by the PAC likely continue to date. As a result, Complainants respectfully request that the Fair Political Practices Commission immediately investigate and audit the PAC's past violations of state law so that the PAC may be held to account for previous violations and so that future violations by the PAC may be prevented.

This complaint is made under Gov. Code 91007(a), 91003, 91004, and 83115. Complainants request the FPPC investigate and commence an administrative action against SCCA-PAC and its treasurer David Keller, based on the organization's failure to comply with the Act as described herein. Complainants also hereby request that the FPPC, in the exercise of its

1 authority as the civil prosecutor for the State, bring a civil action against Respondents to enforce
2 the Act's campaign disclosure provisions. Finally, as permitted under the Government Code,
3 Complainants request the FPPC seek to compel the SCCA-PAC and its treasurer to file any and
4 all omitted campaign finance reports, including required reports of a recipient committee and late
5 contribution reports.

6 II. BACKGROUND FACTS

7 Sonoma County Conservation Action Political Action Committee (FPPC ID No. 911196)
8 is the sponsored recipient committee of Sonoma County Conservation Action. The PAC supports
9 candidates for office and also makes contributions to ballot measure efforts. The PAC files
10 campaign finance reports with the Sonoma County Clerk's office. David Keller is the PAC's
11 current named treasurer.

12 A. Unreported Contributions Received by SCCA-PAC.

13 According to Form 460's filed by California State Senator Pat Wiggins and California
14 Assembly Member Noreen Evans, both officials have given thousands of dollars to the Sonoma
15 County Conservation Action Political Action Committee over the past five years. However,
16 SCCA-PAC has failed to report many of the contributions received from Wiggins and Evans.

17 In total, Complainants were able to identify \$5,415 in contributions from Wiggins and
18 Evans that the SCCA-PAC did not report on its Form 460s as follows:

19

Date	Committee	Amount	Reported by SCCA-PAC?	See Exhibit
5/1/2010	Friends of Pat Wiggins for State Senate 2010	\$300.00	<i>Not Reported</i>	Exhibit A
1/2/2010	Friends of Pat Wiggins for State Senate 2010	\$100.00	<i>Not Reported</i>	Exhibit B
11/7/2009	Friends of Noreen Evans for State Senate 2014	\$500.00	<i>Not Reported</i>	Exhibit C
10/15/2009	Friends of Pat Wiggins for State Senate 2010	\$1,000.00	<i>Not Reported</i>	Exhibit D
9/4/2009	Friends of Noreen Evans for State Senate 2010	\$100.00	<i>Not Reported</i>	Exhibit E
7/3/2009	Friends of Noreen Evans for State Senate 2014	\$250.00	<i>Not Reported</i>	Exhibit E
5/18/2009	Friends of Pat Wiggins for State Senate 2010	\$125.00	<i>Not Reported</i>	Exhibit F
3/13/2009	Friends of Noreen Evans for Assembly 2008	\$300.00	<i>Not Reported</i>	Exhibit G

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5/2/2008	Friends of Noreen Evans for Assembly 2008	\$500.00	<i>Not Reported</i>	Exhibit H
5/22/2007	Friends of Noreen Evans for Assembly 2008	\$1,000.00	<i>Not Reported</i>	Exhibit I
5/15/2006	Friends of Noreen Evans for Assembly 2006	\$250.00	<i>Not Reported</i>	Exhibit J
2/9/2006	Friends of Noreen Evans for Assembly 2006	\$120.00	<i>Not Reported</i>	Exhibit K
12/8/2005	Friends of Noreen Evans for Assembly 2006	\$150.00	<i>Not Reported</i>	Exhibit L
5/15/2005	Friends of Noreen Evans for Assembly 2006	\$500.00	<i>Not Reported</i>	Exhibit M
3/4/2005	Friends of Noreen Evans for Assembly 2006	\$120.00	<i>Not Reported</i>	Exhibit M
1/17/2005	Friends of Noreen Evans for Assembly	\$100.00	<i>Not Reported</i>	Exhibit N
	TOTAL	\$5,415.00		

(See Exhibits A through N hereto.) Exhibits A through N contain the Form 460 reports of Senator Wiggins and Assemblywoman Evans showing contributions to SCCA-PAC. The Exhibits also contain the corresponding Form 460 reports of SCCA-PAC, which fail to disclose thousands of dollars in contributions received by SCCA-PAC from Senator Wiggins and Assemblywoman Evans, in violation of the Act.

Complainants are aware of SCCA-PAC's reporting failures only because Senator Wiggins and Assemblywoman Evans properly reported the contributions. Complainants believe there is a substantial likelihood that additional similar reporting failures exist with respect to contributions received from other entities. Only by reviewing the books of SCCA-PAC and its contributors can the true extent of SCCA-PAC's violations be determined.

B. Additional Reporting Failures by SCCA-PAC.

Additional Evidence of Underreporting Receipts: The Exhibits attached hereto also show that SCCA-PAC is significantly underreporting its receipts. (See, e.g., Exhibits A and B, hereto.) As a recent example of this, consider that from January 1, 2010 through May 22, 2010, SCCA-PAC reported receiving \$1,135.11. When added to its cash on hand of \$856.62 from December 31, 2009, SCCA-PAC had a total of \$1,991.73 in the bank. However, for this same time period, SCCA-PAC reported *spending* \$4,327.11. More troubling is that SCCA-PAC actually reported having \$1,444.62 cash on hand at the end of the May 22, 2010 reporting period! This means that SCCA-PAC raised but never reported or disclosed the source(s) of fully \$3,780

1 in campaign contributions. (*Id.*) (SCCA-PAC did not report *any* current accrued expenditures
2 from the reporting period.)

3 The above is but one example of SCCA-PAC's failures to accurately report its receipts
4 and expenditures as required. (We note also that for the period March 18, 2010 through May 22,
5 2010 time period, SCCA-PAC reported making contributions to two candidates totaling \$2,900,
6 but then also erroneously reported the contributions again on Schedule I as "Miscellaneous
7 Increased to Cash." (See **Exhibit B**, hereto.)) Because virtually all of SCCA-PAC's reports
8 appear to suffer from similar violations, we urge the FPPC to request and review SCCA-PAC's
9 other filings, as well as all relevant back-up documentation related thereto, to ensure that the
10 extent of SCCA-PAC's reporting failures are fully known.

11 **Unreported Subvendor Expenditures:** As the Exhibits attached hereto also demonstrate,
12 SCCA-PAC reported making large payments to its sponsoring organization and other entities and
13 individuals. However, nowhere is it evident that SCCA-PAC ever disclosed the subvendors of
14 those payees, as required. (See, e.g., **Exhibit O**, hereto.) For example, in the reporting period
15 October 19, 2008 through December 31, 2008, SCCA-PAC reported making payments to its
16 sponsoring organization in the amount of \$8,647.50. This is in addition to another \$35,070.89 in
17 payments owed by SCCA-PAC to its sponsor for various professional services. (*Id.*) No
18 subvendors were disclosed on this report. (*Id.*)

19 **III. SCCA-PAC AND ITS TREASURER FAILED TO COMPLY WITH THE**
20 **CALIFORNIA POLITICAL REFORM ACT BY FAILING TO REPORT**
21 **RECEIPTS OF THOUSAND'S OF DOLLARS IN MONETARY RECEIPTS.**

22 In 1974, California adopted the Political Reform Act, which charges the FPPC with its
23 enforcement. (Cal. Gov. Code, § 81000.) Chapter 1 of the Act recites findings of greatly
24 increased costs of election campaigns, large contributions from wealthy corporations and
25 individuals, and the inadequacy of existing laws to address objectionable political practices. (Cal.
26 Gov. Code, § 81001; see also 7 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law
27 § 272, pp. 432-433.)

28 The basic purpose of the Act is to prevent corruption of the political process. To
accomplish this mandate, the Act requires, among other things, that "[r]eceipts and expenditures

1 in election campaigns...be fully and truthfully disclosed in order that the voters may be fully
2 informed and improper practices may be inhibited.” (Cal. Gov. Code, § 81002.) The Act calls
3 for “vigorous enforcement” (§ 81002(f)), and requires that the Act be liberally construed in favor
4 of the purposes of the Act (§ 81003).

5 **A. SCCA-PAC is a “Recipient Committee” that must Disclose Sources of its Income.**

6 Under California law, “recipient committees” as defined in section 82013(a)¹ of the Act,
7 are persons or entities that make expenditures for political purposes and also *receive*
8 contributions. A recipient committee typically makes direct expenditures (*i.e.* contributions)
9 supporting or opposing candidates and/or ballot measure committees and may also make
10 independent expenditures on behalf of a candidate or measure.

11 According to the Act, a “contribution” is considered a payment made for political
12 purposes (including the making of a loan) or anything of value provided to a committee, except to
13 the extent that full and adequate consideration is received. (Cal. Gov. Code, § 82015(a).)

14 The Act maintains detailed disclosure requirements for so-called “recipient committees.”
15 Specifically, the organization must file a registration statement, designate a treasurer, establish a
16 campaign record-keeping system, and satisfy certain other requirements in order to make and
17 receive contributions. (Cal. Gov. Code, §§ 84100 et seq.) In addition, as a registered recipient
18 committee, the organization must file periodic campaign finance reports disclosing contributions
19 made, contributions received, and the identity of contributors to the committee. (*Id.*)

20 When a recipient committee *receives* a contribution, the Act requires the committee to
21 record and disclose specific information about the contribution(s) and contributor(s). Section
22 84211 requires that for each person or entity who contributes a cumulative amount of \$100 or
23 more, a recipient committee must disclose the following information:

- 24 1. The date of the contribution;
25 2. The name and address of the contributor;
26 3. If the contributor is an individual, the name of his or her employer or, if

27 ¹ The Political Reform Act defines the term “committee” in section 82013 as follows:

28 ‘Committee’ means any person or combination of persons who directly or indirectly does any of the
following:

(a) [Recipient Committees] Receives contributions totaling one thousand dollars (\$1,000) or more in a
calendar year.

- 1 self-employed, the name of his or her business;
- 2 4. If the contributor is a committee, the identification number assigned to the
- 3 committee by the Secretary of State;
- 4 5. The amount received from the contributor during the period covered by the
- 5 report; and
- 6 6. The cumulative amount received from the contributor since January 1 of
- 7 the current calendar year.

8 (Cal. Gov. Code, § 84211(h).)

9 In addition, Government Code section 84211(k) also requires that each subvendor who

10 has been paid an amount of \$500 or more be disclosed and identified.

11 Pursuant to Government Code § 81005(b) and 84100, and Title 2 California Code of

12 Regulations, section 18427(a), it is the duty of a committee's treasurer to ensure that a committee

13 complies with all of the requirements of the Act concerning the receipt and expenditure of funds,

14 and the reporting of such funds.

15 SCCA-PAC has qualified and registered as a "recipient committee" (FPPC ID No.

16 911196). The committee received funds (*i.e.* "contributions") from two specific donors who

17 themselves identified many of the payments as "contributions" to SCCA-PAC. Nonetheless,

18 Respondents failed to disclose receipts of these contributions, which amounted to thousands of

19 dollars. These violations of the Political Reform Act could not have been simple, accidental

20 omissions. The violations occurred over a period of years and over numerous campaign finance

21 reporting periods.

22 More importantly, the violations by SCCA-PAC were only discovered because the makers

23 of the contributions (Senator Wiggins and Assemblywoman Evans) also had public reporting

24 responsibilities as candidates for elective state office. The numerous violations by SCCA-PAC

25 evident through Wiggins' and Evans' reports portend other similar violations of the Act by

26 SCCA-PAC and its treasurer. Only by the FPPC requesting and reviewing relevant

27 documentation, under its power of subpoena, including bank records, cancelled checks,

28 transmittal correspondence and similar financial data, can there be a determination as to how deep

the violations by SCCA-PAC and David Keller actually run.

Furthermore, as it is likely that at some point in its existence, SCCA-PAC employed

vendors or others who utilized so-called "subvendors" to assist their work on behalf of SCCA-

1 PAC, such subvendors would have to be disclosed. However, no subvendors were apparently
2 ever disclosed by SCCA-PAC. It is unknown just how many subvendors have gone unreported
3 but this, too, is a significant violation of the Act because entities receiving political funds are
4 effectively concealed.

5 We ask the FPPC request these records from SCCA-PAC and/or its treasurer to determine
6 whether other violations of the Act exist. As you know, in order to comply with the campaign
7 disclosure laws in the Act, SCCA-PAC must maintain and have on hand detailed records and
8 original receipts that are necessary to prepare campaign statements going back a period of four
9 years. (Cal. Gov. Code, § 84104; 2 Cal. Code Regs., § 18401.) In addition, FPPC Regulation
10 18401 requires a committee's treasurer to maintain the name and address of each contributor of
11 \$25 or more. The purpose of this regulation is to allow the treasurer to contact any contributor
12 whose contributions aggregate \$100 or more in a calendar year for occupation and employer
13 information.

14 **IV. REQUEST FOR INVESTIGATION AND ENFORCEMENT**

15 For the foregoing reasons, we respectfully request that the FPPC open an administrative
16 investigation to assess contributions received by Sonoma County Conservation Action Political
17 Action Committee and its treasurer David Keller to confirm what is demonstrated by the evidence
18 presented here -- that SCCA-PAC failed to disclose thousands of dollars in contributions to the
19 PAC in violation of the Political Reform Act.

20 We request further that in the exercise of its authority as the civil prosecutor for the State
21 of California, the FPPC bring a civil penalty action to enforce the Political Reform Act against the
22 SCCA-PAC and its treasurer, David Keller.

23 Finally, we request the FPPC seek to compel SCCA-PAC and David Keller to amend all
24 erroneous filings of SCCA-PAC to correct the violations of State law.

25 **A. Administrative Penalties.**

26 Government Code section 83116.5 provides that any person "who violates any provision"
27 of the Act, or "who purposely or negligently causes any other person to violate any provision of
28 this title, or who aids and abets any other person in the violation of any provision of this title,"

1 shall be liable under the provisions of this chapter. Violations carry fines of up to \$5,000 *per*
2 *violation*. (Cal. Gov. Code, § 83116, emphasis added.) On the evidence presented herein alone,
3 SCCA-PAC and/or its treasurer are liable to the FPPC and the State of California up to an amount
4 of \$80,000.

5 **B. Civil Penalties.**

6 The Act expressly authorizes the FPPC to seek civil penalties as a remedy for violations of
7 the Act. Government Code § 91001 states: "The [Commission] is primarily responsible for
8 enforcement of the civil penalties and remedies of [the Act]." Correspondingly, Government
9 Code § 91004 provides that any person who intentionally or negligently violates any of the
10 reporting requirements of the Act shall be liable in a civil action in an amount up to the amount(s)
11 not properly reported. Persons that violate Government Code §§ 84200 and 84605 are liable in a
12 civil action brought pursuant to Government Code § 91001(b).

13 Government Code § 91005.5 provides that any person who violates any provision of the
14 Act, for which no specific civil liability is provided, shall be liable in a civil action brought
15 pursuant to Government Code § 91001(b) for an amount up to *five thousand (\$5,000) per*
16 *violation*. Pursuant to Government Code § 81005(b) and 84100, and Title 2 California Code of
17 Regulations, section 18427(a), it is the duty of a committee's treasurer to ensure that the
18 committee complies with all of the requirements of the PRA concerning the receipt and
19 expenditure of funds, and the reporting of such funds. A committee's treasurer may be held
20 jointly and severally liable, along with the committee, for any reporting violations committed by
21 the committee. (Cal. Gov. Code, § 91006.)

22 In the exercise of its authority as the civil prosecutor for the State, the FPPC is
23 respectfully requested to bring a civil penalty action to enforce the Act's campaign disclosure
24 provisions against Respondents SCCA-PAC and David Keller. If the FPPC determines that it
25 will not file a civil enforcement action, Complainants respectfully request civil authority to bring
26 its own civil enforcement action as the civil prosecutor.

27
28 **C. Injunctive Relief.**

1 Government Code section 91003(a) state in pertinent part:

2 Any person residing in the jurisdiction may sue for injunctive relief
3 to enjoin violations or to compel compliance with the provisions of
4 this title. The court may in its discretion require any plaintiff other
5 than the commission to file a complaint with the commission prior
6 to seeking injunctive relief.

7 In the exercise of its authority as the civil prosecutor for the State, Complainant hereby
8 also requests the FPPC bring a civil injunctive action to enforce the Act's campaign disclosure
9 provision and compel Respondents Sonoma County Conservation Action Political Action
10 Committee and its treasurer David Keller to accurately prepare and file each report filed
11 incorrectly to the satisfaction of the FPPC and the office of the California Secretary of State.

12 Dated: September 22, 2010

13 **REDACTED**

14 JO TIMMSEN

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18 **VERIFICATION**

19 The foregoing is true and correct or, if stated on information and belief, I believe it to be
20 true and correct. Executed under penalty of perjury under the laws of the State of California this
21 22nd day of September, 2010 at Windsor, California.

22 **REDACTED**

23 Jo Timmsen, Complainant